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Supreme Court, U.S.
FILED
SEP 19 1980
MICHAEL RODAK, JR., CLERK

No. 80-5065

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

October Term, 1980

IN RE: ESTATE OF HELEN JEROKOVITCH, DECEASED

APPEAL OF GEORGE JEROKOVITCH, JR., PROPONENT

RESPONSE TO
APPEAL FROM THE SUPREME COURT
OF PENNSYLVANIA - WESTERN DISTRICT

ANSWER TO MOTION FOR LEAVE
TO APPEAL IN FORMA PAUPERIS

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IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

IN RE:	§	
	§	
ESTATE OF HELEN JEROKOVITCH, DECEASED	§	No. 80-5065 October Term, 1980.
	§	
	§	
APPEAL OF GEORGE JEROKOVITCH, JR.	§	
Proponent.	§	

PRAECIPE FOR APPEARANCE

TO THE CLERK OF THE SUPREME COURT OF THE UNITED STATES:

Please enter my appearance in the above-captioned matter on behalf of the Appellees, Catherine Ricciuti and Margaret Roncadori.

JOSEPH P. MOSCHETTA
28 Court Square Arcade
Washington, PA 15301
Attorney for Appellees.

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ANSWER TO MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

TO THE HONORABLE, THE JUSTICES OF SAID COURT:

AND NOW, come Margaret Roncadori and Catherine Ricciuti, by and through their attorneys, Joseph P. Moschetta, Janet Moschetta and James A. Moschetta, and respond to George Jerokovitch, Jr.'s petition for leave to appeal in forma pauperis as follows:

1. Admitted.

2. Admitted.

3. Denied. It is denied that the allegations contained in George Jerokovitch, Jr.'s, affidavit support a finding of legal indigency necessary to permit this court to grant him to proceed in forma pauperis. Mr. Jerokovitch was employed from 1955 to 1975. At the end of this twenty-year employment history, petitioner was earning $1,191.66 per month. Mr. Jerokovitch has no children and nobody to support other than himself and his wife. By his own affidavit, he receives a monthly income of $462.00 per month Social Security for himself and his wife. He received $450.00 income in 1979 for the sale of livestock and interest payments. Combining his cash, checking and savings account assets, petitioner has $4,700.00 at his disposal.

Petitioner lists his properties as a pickup truck ($200.00) and a home valued at $25,000.00. Petitioner apparently

owns this property free and clear since he does not set forth any mortgage, debts or financial obligations. Petitioner fails to mention, furthermore, that he is entitled by intestacy laws to one-third (1/3) of the value of the above-captioned estate (comprised mainly of a 75-acre farm and old farmhouse located in Washington County, Pennsylvania).

Petitioner does not set forth in his affidavit whether or not his wife is employed. Whatever, the income and assets set forth in Petitioner's affidavit clearly do not establish him as an "indigent" to permit him to proceed in forma pauperis at the taxpayer's expense. See United States vs. Scharp, 354 F. Supp. 450 (1973) affirmed 480 F. 2d 919 (1973).

WHEREFORE, appellees pray that the United States Supreme Court deny the petition to proceed in forma pauperis because appellant fails to qualify as an indigent by the allegations set forth in his own affidavit.

RESPECTFULLY SUBMITTED,

Joseph P. Moschetta

JOSEPH P. MOSCHETTA
Attorney for Appellees, Catherine Ricciuti and Margaret Roncadori.

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PROOF OF SERVICE

I, JOSEPH P. MOSCHETTA, attorney of record for Margaret Roncadori and Catherine Ricciuti, Appellees herein, deposes and says that on the 18th day of September, 1980, I served a copy of the foregoing Answer to Motion for Leave to Appeal in Forma Pauperis on George Jerokovitch, Jr., Appellant herein, by first class mail to the office of Bernard S. Shire, Shire & Bergstein, counsel of record for said George Jerokovitch, Jr., located at 409 Schoonmaker Avenue, Monessen, Pennsylvania, 15062.

JOSEPH P. MOSCHETTA

SUBSCRIBED and sworn to before me, at the office of Joseph P. Moschetta, 28 Court Square Arcade, Washington, Pennsylvania, 15301, on this 18th day of September, 1980.

Notary Public

* *

PROOF OF SERVICE

I, JOSEPH P. MOSCHETTA, attorney of record for Margaret Roncadori and Catherine Ricciuti, Appellees herein, deposes and says that on the 18th day of September, 1980, I served a copy of the foregoing Answer to Motion for Leave to Appeal in Forma Pauperis on Lawrence Barth, Deputy Attorney General, Office of the Attorney General, Eastern Regional Office, Room 206, State Office Building, Philadelphia, Pennsylvania, 19130, by first class mail to the offices of the Attorney General, which office joined in the Brief of the Appellees, Catherine Ricciuti and Margaret Roncadori.

JOSEPH P. MOSCHETTA

SUBSCRIBED and sworn to before me, at the office of Joseph P. Moschetta, 28 Court Square Arcade, Washington, Pennsylvania, on this 18th day of September, 1980.

Notary Public

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RESPONSE TO APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA - WESTERN DISTRICT

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g.) Counter statement of the case:

Appellees are satisfied with appellant's statement of the case as to the procedural history, but challenge the chronology of facts appellant set forth as being unbalanced and incomplete. Appellees, therefore, set forth a counter statement of the factual case as follows:

On June 10, 1965, Helen Jerokovitch, the decedent, allegedly executed a will by mark. The testatrix was an illiterate person who could not read or write in English and who did not speak any English but for a few simple words. The scrivener did not read the will to testatrix and does not recall anyone else present reading the will to testatrix in English or any other language. Scrivener does recall some conversation between decedent's husband and herself in Croatian, but he has no idea what was being said. George Jerokovitch, Jr., testified that his father spoke to decedent in Croatian telling her the contents of the will. George Jerokovitch, Jr., the sole beneficiary under the will, is the only witness alive (the decedent's husband and the two subscribing witnesses all predeceased the Testatrix) who was present at the execution who understands Croatian and would be in a position to translate what conversation, if any, transpired between the decedent's husband and the decedent.

Scrivener prepared decedent's will at his office prior to June 10, 1965. The four places on the alleged will where Helen Jerokovitch's name appeared (typewritten) were all typed on the document at the magistrate's office prior to June 10, 1965, and outside the presence of Helen Jerokovitch and the signatory witnesses.

On the signatory line where the word "Seal" is imprinted, the words "her mark" with parentheses marks are contained along with a mark "X", allegedly being the mark of Helen Jerokovitch. The name, Helen Jerokovitch, does not appear

directly above, below or to the right or left of the signatory line. Neither the scrivener, who was present at the time of execution, nor any other person printed, wrote or typed in the name of Helen Jerokovitch in her presence either immediately prior to or after she allegedly affixed her mark to the will. The two subscribing witnesses to decedent's will both predeceased testatrix.

h.) Statement of why federal questions involved are unsubstantial:

The federal questions raised in this appeal are not substantial; therefore, plenary consideration by the Supreme Court of the United States is not warranted. The requirement of 20 P.S. §2502 (2) that the testator's name must be subscribed to the will in her presence at the time she affixes her mark to the will is directly related to the goal of preventing the testator from falling victim to fraud. The right to make a will is not a common law or constitutional right. Rather, it is a statutory right subject to legislative control and must be enjoyed subject to such conditions as the state sees fit to impose.

The first federal question raised by the appellant herein is inaccurate because the section's requirements, especially the requirement that testatrix' name be subscribed in her presence before or after she made her make, has a reasonable purpose. The class of persons who are permitted to sign by mark comprises people who are disabled, ill, weak, nervous, blind, illiterate, and so forth. Contrary to the contention of the appellant, illiterates, including those that are blacks and foreign, are treated no different than other members of that class. Hence, there is no unequal treatment among the members of that class. Therefore, Section 2502 (2) of the Code does not violate the equal protection clause of the Fourteenth Amendment of the Constitution of the United States.

In the second and third federal questions raised by the appellant, the appellant argues that Section 2502 (2) violates the Due Process Clause of the Fourteenth Amendment of the United States in two respects as follows: (1) because of an irrebuttable presumption of invalidity if the requirements of §2502 (2) are not fulfilled, and (2) because Section 2502 (2) can be interpreted in a number of ways. No one's due process rights are violated by requiring uniform strict compliance when

the requirements of §2502 (2) are simple and clear and produce no confusion or feelings of vagueness as to the section's meaning. The phrase "...and to which his name is subscribed in his presence before or after he makes his mark" cannot be stated any more clearly to make its meaning known to an ordinary reader.

In light of the foregoing, none of the federal questions raised by the appellant requires plenary consideration by the Supreme Court.

The very purpose of this statute is to enable members of this class (a testator who is unable to sign his name for any reason) to have the right to give and receive property through testation. Otherwise, they would have no such right of testation because they cannot sign their name.

Furthermore, a will signed by mark can be validated very easily under Pennsylvania law. All that is required is that the name be subscribed next to the mark in the presence of the testator. Wills executed by mark which do not comport with this simple requirement should and must fail. There is a long line of authority interpreting Section 2502 (2) of the Probate, Estates and Fiduciaries Code, 20 P.C.S.A. §2502 (2), and Pennsylvania courts have uniformly ruled that where signature has been made by mark, but testator's name was not subscribed in his presence, the will is invalid. See Hughes' Estate, 286 Pa. 466 (1926); Rosato's Estate, 322 Pa. 229 (1936); James' Estate, 329 Pa. 273 (1938); Hunter's Estate, 328 Pa. 484, 196 A 35 (1937); Orlady's Estate, 326 Pa. 369, 9 A2d 539 (1940); DeLeece's Estate, 67 D. & C. 236 (1948); Barone Estate, 2 Fid. Rep. 149 (1950); Zakatoff Will, 367 Pa. 542 (1951); Torhan Will, 401 Pa. 520, 164 A2d, 923 (1960); Rhoades Estate, 399 Pa. 476, 160 A2d 532 (1960); Sevich Will, 57 D. & C. 2d 727 (1973); and Brophy's Estate, 75 D. & C. 2d 636 (1976).

In the recent case of Brophy's Estate, supra., the court held that "there must be strict compliance with these

statutory provisions, and a will is not valid unless executed in accordance threwith. If executed by mark, it is not a lawful instrument unless testator's name was subscribed in his presence and by his direction and authority." The court in Brophy's Estate strictly enforced the requirements of 20 P.S. §2502 (2). The appellant makes reference to and relies on the court's comment rather than the court's decision concerning the statute in question as it applied to the facts of the Brophy case only, which are clearly distinguishable from the facts of the instant case, wherein there was no clear showing that the testatrix intended that the document be her will and was not specifically aware that her name was subscribed thereon. In fact, her name was never subscribed thereon.

Conversely, the statute in question is well written, clear, has a rational purpose, and does not treat illiterates any different from other members of the class. Thus, there is no substantial constitutional question here at all, as the Pennsylvania Supreme Court so ruled in affirming the lower court opinion per curiam.

RESPECTFULLY SUBMITTED:

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Counsel for Appellant

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JOSEPH P. MOSCHETTA

SUBSCRIBED and sworn to before me, at the office of Joseph P. Moschetta, 28 Court Square Arcade, Washington, Pennsylvania, 15301, on this 18th day of September, 1980.

Notary Public

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JOSEPH P. MOSCHETTA

SUBSCRIBED and sworn to before me, at the office of Joseph P. Moschetta, 28 Court Square Arcade, Washington, Pennsylvania, 15301, on this 18th day of September, 1980.

Notary Public